U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 8 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as a "Financial analyst." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement in support of her eligibility and additional documentation.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The petitioner did not execute this required document for the petition, and therefore the petitioner has not properly applied for the national interest waiver. For this reason alone, the petitioner has failed to establish eligibility for the benefit sought.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner has established that her work in the financial field is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work would

be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on April 9, 2007. In a statement accompanying the petition entitled "The reasons why I file I-140" the petitioner expressed her desire to work for a financial company in New York to help the city maintain its status as "the world's financial capital." The petitioner did not specifically mention the *NYSDOT* guidelines or explain how she meets them.

In support of the petition, the petitioner submitted articles entitled and The articles discuss a burdensome regulatory environment in the United States that is encouraging financial services companies to pursue business opportunities overseas in cities such as London. General arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding articles demonstrate that the petitioner's specific work has or will benefit the national interest to a greater extent than other financial analysts with the same minimum qualifications.

The petitioner also submitted her Master of Business Administration (MBA) degree from the As previously indicated, the director has determined that the petitioner qualifies for classification as a member of the professions holding an advanced degree. This issue in this matter is whether the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement.

In addition, the petitioner submitted a listing of company stock quotes from Yahoo Finance, and stock research for the "Pharmaceuticals & Biotechnology," banking, "Oil & Gas" production, chemical, real estate, and "Forestry & Paper" industries showing company rankings by market cap and earnings growth. None of this documentation indicates the petitioner's work in the financial industry has influenced the field on a national level. At issue is whether this petitioner's contributions in the field are of such unusual significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A

petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The director issued a request for evidence on August 13, 2008, instructing the petitioner to submit evidence to establish that she meets the eligibility factors set forth in *NYSDOT*.

In response, the petitioner submitted a statement asserting that her work in national in scope based on her Bachelor of Science degree in Economics from the her MBA in Finance, her "almost ten years" of experience working for a public company in China, and her experience in personal financial matters such as stock investments and insurance. The petitioner submitted her "Graduation Certificate" from the an "Insurance receipt" dated 11/28/1997, a ' dated 01/17/2006, and a ' stock exchange Stock account" opened on 09/25/1996. The English language translations accompanying the preceding documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* Regardless, academic degrees and experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. None of the preceding documents demonstrate that the petitioner's work as a financial analyst will produce benefits that are national in scope.

In regard to influencing the field to a greater extent than an available U.S. worker with the same minimum qualifications, the petitioner asserted that she "developed investment theory," provided financial advice to and scored "85 out of 100" on a job candidate examination administered by the State of New York Banking Department. The petitioner, however, has failed to submit documentary evidence showing that she developed an "investment theory" that has influenced the financial industry. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted a September 19, 2008 letter from Chairman, President, and Chief Executive Officer, stating: "I have known [the petitioner] for about 5 years. During that time, she has shown and proven to me that she is well educated in finance, learns quickly and comes to conclusions that are very accurate. I would strongly recommend her to anyone requiring her services." Mr. comments on the petitioner's education and the accuracy of her conclusions, but he fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

The petitioner submitted a September 4, 2008 letter from the State of New York Banking Department indicating that she "received a score of 85 on Examination No. 20-598 Bank Examiner

Trainee 1," but the test results post-date the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the petitioner failed to explain how achieving a passing test score for a "Trainee" Bank Examiner position demonstrates that she has influenced the field as a whole. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT* at 219, n.6.

The director denied the petition on January 7, 2009. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director stated that the petitioner had failed to demonstrate that the benefits of her proposed employment would be national in scope. In addition, the director indicated that the petitioner had failed to submit documentary evidence of "specific prior achievements that would establish her ability to benefit the national interest."

On appeal, the petitioner states that she intends "to work with a financial institution or government by providing financial advisory services in connection with mergers, acquisitions, divestitures, recapitalizations, leveraged buyouts, and public and private financings." The petitioner comments that her "prospects for employment as a financial analyst in the United States are quite broad." The petitioner's comment suggests a demand for her services, a demand that the alien employment certification process can address. The petitioner also claims that a "typical American financial analyst" is "weak" in mathematics-related subjects and that the industry lacks "highly qualified financial analysts to do the work." The record, however, does not include documentary evidence to support the petitioner's assertions. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Regardless, a shortage of qualified workers in a given field is an issue that falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT* at 221.

On page 4 of her statement accompanying the appeal, the petitioner questions the director's reliance on the eligibility factors set forth in *NYSDOT* as guidance for adjudicating the Form I-140 petition. With regard to the director following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

The petitioner states:

> The Service concluded that "Under this analysis, it would appear that advising clients would provide benefits that would be so attenuated at the national level as to be negligible."

> Pursuant to this guidance's logic, I am inferring that no individual is able to provide benefits that would be national in scope.
>
> The logic's problem lies in the fact that it does not draw a line between a good attorney and an ordinary one, a good elementary school teacher and a bad one, a good cook and a mediocre one. . . . Consequently, the benefits that a good attorney, a good teacher or some other professionals who qualify as a member of the professions holding an advance[d] degree can bring about are measurable and national in scope.

NYSDOT cited to a school teacher, a pro bono attorney, and a cook as examples of occupations in fields with overall national importance (education, free legal services, and nutrition), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3. The statutory standard is that the waiver will serve the national interest, and the petitioner's observations about a "good" worker versus an "ordinary" worker in a given field do not address that standard. Once again, under the regulation at 8 C.F.R. § 103.3(c), *NYSDOT* is binding precedent on all USCIS employees, and the petitioner's assertions pertaining to an alternative standard unsupported by statute or regulation cannot succeed.

The petitioner submits a membership card for the [redacted] Stock Exchange, a membership card for the [redacted] Stock Exchange, a 1997 insurance payment receipt, and a 2006 insurance payment receipt. The petitioner also submits a certified English language translation of the preceding documents and of her "Graduation Certificate" from the [redacted] None of the preceding documents demonstrates that the proposed benefits of the petitioner's work as a financial analyst will be national in scope. In the present matter, the benefits of the petitioner's impact as a fiancial analyst would be limited to her employer and its clients and, therefore, so attenuated at the national level as to be negligible.

Regarding her ability to "benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications," the petitioner states: "I do have not only precious gifts and skills, but also a 'unique background.'" As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT* at 221.

The petitioner asserts that the "financial opinion" that she provided to [redacted] "distinguishes her from most . . . American financial analysts" and demonstrates her "past history of achievement with some degree of influence on the finance field as a whole."

The petitioner submits a February 4, 2009 letter from [redacted] stating:

> [The petitioner] is very knowledgeable about economic matters as they relate to business and the economy. As Chairman/CEO of [redacted] (Nasdaq:ACET), she has given me

some very excellent advice about economic matters and I trust her judgment very highly. As a matter of fact, she has been sought after as a finance expert.

Mr. praises the petitioner for her knowledge, economic advice, judgment, and financial expertise, but Mr. s observations do not set the petitioner apart from other competent and qualified financial analysts, or explain how the petitioner's work has impacted the field beyond his company.

The petitioner's appellate submission includes a May 1, 2013 letter from Mr. commenting again on his reliance on the petitioner's financial advice and stating that the petitioner "is an outstanding finance professional who has been contributing to New York City." Mr. however, does not explain how the petitioner's impact or influence is national in scope.

The petitioner submits an April 8, 2013 letter from President of , stating:

main service is to assist homeowners facing foreclosures in reducing their monthly payment on their mortgage. In her position as a Processor, [the petitioner] has been contracted by our office from July 2010 to present. [The petitioner] has done an excellent job in this position and has been a great asset to our company during her tenure with the company. She has excellent math skill, great financial analysis skill, and has a remarkable rapport with our clients. To this date, with the help of [the petitioner] has been responsible for successfully keeping over 10,000 families in their homes.

[The petitioner] has always been willing to offer more then [sic] what was expected from her. [The petitioner] enhanced our services already in place and developed templates to speed up our processing time. She worked directly with new employees to acclimate them to her systems which in return increase the companies over all production. Most of all she was able to process all tasks through completion to ensure that the job was done above and beyond our company's and clients expectations.

The petitioner's work for post-dates the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, Mr. 's letter discussing the petitioner's work for his company from 2010 through 2013 cannot be considered in this proceeding. Regardless, while Mr. comments on the petitioner's responsibilities at and her business skills, he fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

The petitioner also submits an April 23, 2013 letter from a certified public accountant in the State of New York and owner of stating:

I have been [the petitioner's] accountant for last few years.

> After the severe recession happened, [the petitioner] has referred clients to me when she found those clients' previous accountants made mistake in their tax returns. For instance, the previous accountant of Mr. from Long Island did not declare him as a small business owner as he should be. Instead, the accountant had declared him as a wage earner from another business. Although Mr. was facing foreclosure with a veteran son who did not get a job at that time, his mortgage bank could not modify his loan. After I fixed his tax filing problem, [the petitioner] explained the situation to Mr. s mortgage bank with relevant financials. As a result, Mr. 's loan was modified. The family continues to stay in their house.
>
> New York needs professionals to work for its financial health and financial improvement. [The petitioner] is just such a finance professional who has an advanced degree and applies her knowledge to today's complicated world.

Mr. indicates that the petitioner provided helpful financial guidance to a client, and Mr. s comments demonstrate that the petitioner works in an area of substantial intrinsic merit. However, Mr. s comments do not indicate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other qualified financial analysts. Furthermore, the petitioner provided the aforementioned guidance to the client subsequent to filing the I-140 petition. Again, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In addition, the petitioner submits a May 9, 2013 letter from stating:

> Although I own a 3-unit house in New York, I used to be an auditor in Texas State Comptroller's office. In the summer of 2008, I started up with my friend our restaurant business. However, because the economy was slowing down at that time, our restaurant was not frequented a lot by customers. Gradually, we used up all our cash reserves and I fell behind on my mortgage payments. I tried to borrow money from my relatives to cope with the situation, but Hurricane Sandy and Nor'easter hit us hard and made us lose more financially.
>
> With the help of [the petitioner] and the company she works with, my loan got modified. I'm keeping the house and moving forward.

Mr. comments on the loan modification that the petitioner helped him secure, but Mr. fails to provide specific examples of how the petitioner's work has influenced the field as a whole. Moreover, the loan modification performed by the petitioner post-dates the filing of the petition. Once again, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner's references fail to demonstrate that her work has had an impact or influence outside of the companies or clients for which she has worked. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The petitioner's appellate submission also includes an October 21, 2011 letter from a Human Resources Management representative at the stating that the petitioner "received a score of 100 on Examination No. 20-598 Bank Examiner Trainee 1" for candidates applying for that position with the The letter from the further states: "Due to New York's current fiscal constraints, a statewide hiring freeze has been established that is applicable for most State positions at this time." While passing a standardized test for an entry level position may demonstrate that the petitioner is qualified to become a "Bank Examiner Trainee" in New York, it does not establish a past history of achievement with some degree of influence on the field as a whole. Regardless, the submitted test results again post-date the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In this matter, the petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.